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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,039	09/22/2003	Laurier Falldien	DWE/MAGIC DRAGON/FALLDIEN	6572

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EXAMINER	
COE, SUSAN D	

ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/666,039	FALLDIEN, LAURIER	
	Examiner	Art Unit	
	Susan D. Coe	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) *1-4 and 12-14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-14 are currently pending.

Election/Restrictions

2. Applicant's election of Group II, claims 5-11 in the reply filed on June 3, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1-4 and 12-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 3, 2004.

4. Claims 5-11 are examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 5 is indefinite because it states that the composition is used for prophylaxis but does not state what it is a prophylaxis for.

6. Claims 7-9 are indefinite because they state that the composition is "in combination with" various containers. The use of "combination" indicates that the container is mixed with the composition rather than the composition being contained in the container itself. This is indefinite because a solid container clearly will not be mixable with a liquid composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,472,684 in view of US Pat. No. 6,290,417.

US '684 teaches a composition for oral cleansing that comprises glycerin, tea tree oil, peppermint oil, and water (see Tables 12 and 16). However, the reference does not specifically teach adding sea salt to the composition. US '417 teaches that sea salt is used in oral cleansing (see column 4, line 15). Thus, it was known in the art at the time of the invention that sea salt is used to clean the mouth. Based on this knowledge, a person of ordinary skill in the art would reasonably expect that adding sea salt to the oral cleaning composition of US '684 would be beneficial. Therefore, based on this reasonable expectation of beneficial results, a person of ordinary skill in the art would have been motivated to combine sea salt with the composition of glycerin, tea tree oil, peppermint oil, and water.

The references do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

US '684 does not specifically disclose that the glycerin used is vegetable glycerin. However, it is known in the art that glycerin derived from animal and vegetable sources can be used interchangeably. Thus, it would be obvious to use vegetable glycerin in the composition of US '684.

The references also do not specifically teach that the composition is placed in a container as claimed by applicant. However, placing the composition in a container is considered to be an intended use of the composition. Placing a composition in packaging does not effect the basic properties of the composition. The composition is the same no matter if it is placed in a bottle or a bag or a box. Thus, the references are considered to teach the claims even though they do not specifically teach the claimed containers.

8. Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. Pub. No. 2003/0031730 in view of European Pat. Appl. No. 1108422 A2.

US '730 teaches a nasal passage cleansing composition that comprises water, tea tree oil, peppermint oil, glycerin, and sodium chloride (see Table 1). While the reference does teach

using salt it does not specifically teach using sea salt. EP '422 teaches that sea salt can be used interchangeably with sodium chloride in a nasal cleansing composition (see English abstract). Thus, based on this disclosure of the interchangeable nature of sea salt and sodium chloride, a person of ordinary skill in the art would reasonably expect that sea salt would function equivalently to the sodium chloride in the composition of US '730. Based on this equivalence, a person of ordinary skill in the art would be motivated to substitute sea salt for sodium chloride in US '730.

The references do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

US '730does not specifically disclose that the glycerin used is vegetable glycerin. However, it is known in the art that glycerin derived from animal and vegetable sources can be used interchangeably. Thus, it would be obvious to use vegetable glycerin in the composition of US '730.

The references also do not specifically teach that the composition is placed in a container as claimed by applicant. However, placing the composition in a container is considered to be an intended use of the composition. Placing a composition in packaging does not effect the basic

properties of the composition. The composition is the same no matter if it is placed in a bottle or a bag or a box. Thus, the references are considered to teach the claims even though they do not specifically teach the claimed containers.

9. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan D. Coe

Susan D. Coe, Examiner
June 24, 2004